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Cases, Regulations, and Statutes

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personal service corporation and its employee-owners to more clearly reflect income of both taxpayers.[12]

The case of *Rainbow Tax Services, Inc.*

The focus of *Rainbow Tax Services, Inc. v. Commissioner*[13] however, was on the loss of the corporate graduated rates. In that case, the corporation involved was engaged in tax return preparation and bookkeeping services.[14] The tax return preparation services generally consisted of preparing clients' federal and state individual, corporate and partnership returns as well as gift and estate tax returns. The bookkeeping services consisted of the preparation, from client records, of profit and loss statements and other reports and forms relating to federal payroll taxes, state unemployment taxes and sales taxes.[15] The firm in question was not a public accounting firm and did not perform work requiring Certified Public Accountant licenses.

The accounting firm defended on the grounds that it was not performing accounting services and pointed out that, under state law, accounting services can only be performed by CPAs, the firm did not employ CPAs and the firm did not perform services restricted under state law to CPAs.

The Tax Court rejected what it termed the "overly restrictive definition of accounting services"[16] and pointed out that "public accounting" is a *branch* of accounting and requires a CPA license but "accounting" embraces the rest of the field of "accounting."[17] The court then held that the tax return preparation services provided by Rainbow Tax Services, Inc. constituted services in the field of accounting; the court also held that bookkeeping is a branch of accounting.[18]

In a 2006 case, *Ron Lykens, Inc. v. Commissioner,*[19] the parties did not dispute that tax return preparation services constituted accounting services. In that case, the taxpayer had split the business into an entity providing investment advice and another entity providing accounting services. However, the employees were found to devote only 80.53 percent of their time to accounting services so the firm was not a personal service corporation. As noted, the temporary regulations require 95 percent or more of the time spent by employees of the corporation for the corporation to be a personal service corporation.[20]

Footnotes

1 128 T.C. No. 5 (2007).

2 I.R.C. § 11(b)(2), 448(d)(2). See generally 4 Harl, *Agricultural Law* § 30.08[1][a][iii][A] (2006); 7 Harl, *Agricultural Law* § 54.06[1][b][ii] (2006); Harl, *Farm Income Tax Manual* § 1003(f) (2006 ed.).

3 Pub. L. No. 100-203, § 10224(a), 101 Stat. 1330, 1330-412 and 1330-413 (1987).

4 I.R.C. § 11(b)(2).

5 *Id.*

6 I.R.C. § 448(d)(2).

7 Alron Engineering & Testing Corp. v. Comm'r, T.C. Memo. 2000-335 (corporation providing geotechnical testing and engineering services was not personal service corporation and could avoid 35 percent flat rate). See I.R.C. § 448(d)(2)(A). See Rev. Rul. 91-30, 1991-1 C.B. 61, *modified by* Rev. Rul. 92-65, 1992-2 C.B. 94 (corporation providing veterinary services was personal service corporation); TAM 9222004, Jan. 8, 1992 (corporation providing physical therapy services was personal service corporation).

8 Temp. Treas. Reg. § 1.448-1T(e)(4)(i).

9 I.R.C. § 448(d)(2)(B).

10 Temp. Treas. Reg. § 1.448-1T(e)(4)(i).

11 See Temp. Treas. Reg. § 1.448-1T(e).

12 I.R.C. § 269A(a).

13 128 T.C. No. 5 (2005).

14 *Id.*

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 T.C. Memo. 2006-35.

20 Temp. Treas. Reg. § 1.448-1T(e)(4)(i).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr

BANKRUPTCY

CHAPTER 12

ELIGIBILITY. The debtors, husband and wife, filed for Chapter 12 bankruptcy and a creditor objected to the debtors' eligibility for Chapter 12 based on the debtors' Schedule F income reported for the tax year before filing for bankruptcy. In particular, the creditor argued that the proceeds from the sale of a truck and trailer were not farm income because the depreciation for the equipment was reported on Schedule C, Form 4562. The court noted that the truck and trailer were used primarily for farm operations in hauling hay, straw and cattle; therefore, the proceeds of the sale of the equipment were farm income. With the sale proceeds included in farm income, the debtors' farm income for the tax year prior to the bankruptcy petition was 51.47 percent of total income and qualified the debtors for Chapter 12. ***In re* Wilson, 2007 Bankr. LEXIS 359 (Bankr. D. Mont. 2007)**.

PLAN. The Chapter 12 debtor had secured loans with a bank but violated the terms of those loans by selling collateral cattle without applying the proceeds to the loans. The bank sought to have the loans declared nondischargeable and the parties settled on a portion of the loans being characterized in the debtor's plan as unsecured but paid in annual installments. The bank also instituted criminal proceedings against the debtor outside of the bankruptcy (no discussion of the bankruptcy stay is included in the case) and the debtor was convicted of criminal conversion of the collateral. The debtor received a suspended sentence but was ordered to and did pay restitution. The debtor then sought to have the restitution payment credited against the unsecured and secured claims owed to the bank in the bankruptcy case. The court held that the restitution payment could be offset against the plan payments for the unsecured claims of the bank because the restitution amount was closely linked to the same loans which gave rise to the unsecured nature of the claims. ***In re* Durler, 2007 Bankr. LEXIS 395 (Bankr. D. Kan. 2007)**.

FEDERAL TAX

DISCHARGE. The debtor filed for Chapter 7 bankruptcy on April 1, 2004 and did not make the election under I.R.C. § 1398(d)(2)(A) to divide 2004 into two short tax years as of the petition date. The debtor filed a pre-petition claim for the 2004 taxes attributable to the 2004 pre-petition period when the debtor learned that the bankruptcy estate would have sufficient assets to pay claims. The court held that the statute was clear that the election had to be made by the 15th day of the fourth month after the petition date; therefore, the 2004 pre-petition portion of the 2004 taxes was included in the post-petition 2004 tax year and could not be included in the pre-petition claims. ***In re* Allen, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,294 (Bankr. D. Mass. 2006)**.

CONTRACTS

ACCEPTANCE OF GOODS. The debtor entered into a finance lease contract under which the debtor agreed to lease four crop sprinkler systems which were purchased from a third party. The debtor received one system and had it installed but the second and third systems were delivered but not installed. A fourth system was not delivered. None of the sprinkler systems conformed to the systems identified under the contract. However, the debtor did not unconditionally reject any of the delivered systems but indicated that an attempt to use the systems was intended. The debtor did unconditionally reject the second and third systems four months after delivery. The court held that the debtor was liable for the lease payments on the three sprinkler system delivered because the debtor failed to make a timely unconditional rejection of the systems. ***In re* Rafter Seven Ranches LP v. C.H. Brown Co., 2007 Bankr. LEXIS 470 (Bankr. 10th Cir. 2007), *aff'g*, 2006 Bankr. LEXIS 186 (Bankr. D. Kan. 2006)**.

UNJUST ENRICHMENT. The plaintiffs were farmers who purchased or leased equipment from the defendant equipment dealer. The dealer fraudulently misrepresented the transactions to the manufacturer of the equipment. When the manufacturer discovered the fraud, the manufacturer had the farmers sign account verifications which were erroneous and which were voided by the court. The manufacturer then raised the issue that the farmers were unjustly enriched by the fraud of the dealer and should be required to compensate the manufacturer for the cost of the equipment retained by the farmers. The court pointed out that the doctrine of unjust enrichment is designed to recover only the amount a party has gained without compensation and without fault from the offended party. Thus, in this case, any unjust enrichment would be limited to the value of the use of the equipment during the period of the fraud by the dealer. However, the court noted that the manufacturer chose to attempt to force the farmers to approve contracts which were not accurate as to the terms of the initial transactions; therefore, the manufacturer caused a good deal of the loss of value of the equipment from failing to either seek immediate recovery of the equipment or payment under the terms of the original transactions. Therefore, the court held that the farmers were not unjustly enriched because the loss of value resulted from the manufacturer's own actions. **Day v. Case Credit Corp., 2007 U.S. Dist. LEXIS 12465 (E.D. Ark. 2007)**.

ENVIRONMENTAL LAW

CLEAN WATER ACT. The defendant was sued for violation of the Clean Water Act for permitting the discharge of waste water into a non-navigable pond. The plaintiffs argued that, because a nearby navigable slough occasionally overflowed into the pond, the pond was regulated by the Clean Water Act. The pond was separated from the slough by a berm and a wetland area which could be over 125 feet wide at low tide. The defendant argued that the pond was covered by the Act only if the pond was adjacent to the slough and was designated as a wetland. The court agreed, holding that the definition of "waters" covered by the Act, as provided in 40 C.F.R. § 122.2, included only wetlands adjacent to navigable waters and not ponds separated from navigable waters. **San Francisco Baykeeper v. Cargill Salt Division, 2007 U.S. App. LEXIS 5442 (9th Cir. 2007), *rev'g*, 2003 U.S. Dist. LEXIS 8247 (N.D. Cal. 2003)**.

FEDERAL AGRICULTURAL PROGRAMS

HORSE PROTECTION ACT. The petitioner's Tennessee Walking Horse was inspected after arriving at a horse show by the show's HPA compliance person and two veterinarians. The three inspectors concluded that the horse's feet had been sored by use of chemicals or mechanical means and issued tickets for violation of the HPA. The petitioner argued that the horse's feet suffered from a long transport to the show, the petitioner had never been cited before for soring a horse in over 15 years, and that the repeated examinations by three persons could have explained the reactions of the horse. The Administrative

Law Judge dismissed the violations because the petitioner had successfully rebutted the evidence sufficient to cast doubt on the existence of soring. On administrative appeal the Judicial Officer reinstated the violations, ruling that the rebuttal arguments were insufficient to overturn the on-site inspections of three trained inspectors. Although the court noted that the issue was close, the court held that the Judicial Officer's ruling was affirmed because it was based on substantial evidence of the professional examinations. **Zahnd v. U.S.D.A., 2007 U.S. App. LEXIS 3752 (11th Cir. 2007)**.

KARNAL BUNT. The APHIS has adopted as final regulations removing areas in Maricopa and Pinal counties in Arizona and Archer, Baylor, Knox, McCulloch, San Saba, Throckmorton, and Young counties in Texas from the list of regulated areas subject to quarantine for Karnal bunt. **72 Fed. Reg. 10593 (March 9, 2007)**.

NATIONAL ORGANIC PROGRAM. The AMS has issued proposed regulations which amend the USDA's National List of Allowed and Prohibited Substances regulations to reflect recommendations submitted to the Secretary of Agriculture by the National Organic Standards Board from November 17, 2005 through October 19, 2006. The recommendations addressed in this proposed rule pertain to the continued exemption and prohibition of 169 substances in organic production and handling. Consistent with the recommendations from the NOSB, this proposed rule would renew 166 of the 169 exemptions and prohibitions on the National List (along with any restrictive annotations), and remove 3 exemptions from the National List. **72 Fed. Reg. 9872 (March 6, 2007)**.

VETERINARIANS. The APHIS has issued amended proposed regulations making three changes related to a proposed rule published at 71 Fed. Reg. 31109 (June 1, 2006), that would amend the regulations regarding the National Veterinary Accreditation Program. The June 2006 proposed rule would establish two accreditation categories in place of the current single category, add requirements for supplemental training and renewal of accreditation, and offer accreditation specializations. The amendments to the proposed rule adjust the scope of the two accreditation categories to require initial accreditation training for veterinarians seeking accreditation; to require newly accredited veterinarians to renew their accreditation three years after completing initial accreditation training; and to reduce the training required for renewal of accreditation from the amount discussed in the June 2006 proposal. **72 Fed. Reg. 8634 (Feb. 27, 2007).**

FEDERAL ESTATE AND GIFT TAXATION

CLAIMS. The decedent had signed a divorce agreement, under which the decedent agreed to share with the ex-spouse any proceeds from the sale of stock in a company owned by the decedent. The agreement provided, however, that no payment was required if the stock was transferred to the decedent's children. At the death of the decedent, the stock passed to the decedent's children who then desired to sell the company. The children believed that the ex-spouse had a claim against the sale proceeds and negotiated a payment to the ex-spouse. The estate argued that it was entitled to a deduction for the amount paid to the ex-spouse either as a claim paid by the estate or a marital deduction. The court held that, because the ex-spouse's claim against the sale of the company dissolved when the stock was transferred to the children, the ex-spouse did not have any claim against the estate for a portion of the proceeds of the sale; therefore, the claim was not enforceable against the estate and not entitled to a deduction. In addition, because the proceeds of the sale were paid to the ex-spouse by the children and not by the estate, no marital deduction was allowed. **Gottesman v. United States, 2007-1 U.S. Tax Cas. (CCH) ¶ 60,536 (S.D. N.Y. 2007)**.

FEDERAL INCOME TAXATION

ALTERNATIVE MINIMUM TAX. The taxpayer had received stock options which produced alternative minimum tax (AMT) income in the year the options were exercised. However, in subsequent years, the stock dropped in price and the taxpayer realized AMT capital losses when the stock was sold or forfeited. The taxpayer argued that the losses should be carried back as either net operating losses or ordinary losses to offset the AMT income from the year the options were exercised. The court cited several Tax Court and District Court cases involving similar facts and arguments and held that the taxpayer could not carry back the losses to offset previous AMT income in order to claim a refund of taxes based on the AMT income. **Guzak v. United States, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,307 (Fed. Cls. 2007)**.

CORPORATIONS

ACCOUNTING METHOD. I.R.C. § 447(i) provides that if a family farming corporation is required to change its accounting method prior to June 9, 1997, it must establish and maintain a suspense account instead of taking adjustments with respect to the amounts included in the suspense accounts. I.R.C. § 447(i)(5) provides that no suspense account may be established with respect to changes of accounting method after June 8, 1997, and I.R.C. § 447(i)(5)(B) provides for the phasing out of suspense accounts over 20 years, setting the amount of annual reduction to be based on an "applicable portion" of the account. The use of the same amount as the applicable portion every year by some taxpayers was inconsistent with the statute, which indicates that the reduction amount must reflect prior reductions. In a Chief Counsel advice letter, the IRS ruled that the applicable portion should be recalculated on an annual basis during the first 20 years and that the applicable portion for a taxable year will be greater than the applicable portion in a prior year whenever the suspense account was reduced in a prior year by an amount less than the applicable portion for that year. **CCA Ltr. Rul. 200708071, Jan. 22, 2007**.

PERSONAL SERVICE CORPORATION. The taxpayer and decedent owned and operated a federal and state tax return preparation and bookkeeping business corporation. Neither the taxpayer nor the decedent was a certified public accountant and filed corporation income tax returns using tax liability calculated under I.R.C. § 11(b)(1) (graduated rates). The taxpayer argued that the corporation was not a personal service corporation under I.R.C. § 448(d)(2)(B) because tax return preparation was not accounting services and the taxpayer and decedent were not CPAs. The court held that tax return preparation and related bookkeeping were branches of accounting; therefore, a corporation which performed those services was a personal service corporation required to use the flat 35 percent tax rate in I.R.C. § 11(b)(2). **Rainbow Tax Services, Inc. v. Comm'r, 128 T.C. No. 5 (2007)**.

REORGANIZATIONS. The IRS has issued proposed regulations amending Treas. Reg. § 1.368-2T(l), which provides guidance regarding the qualification of certain transactions as reorganizations described in I.R.C. § 368(a)(1)(D) where no stock and/or securities of the acquiring corporation are issued and distributed in the transaction. The proposed regulations clarify that the rules in Treas. Reg. § 1.368-2T(l) are not intended to affect the qualification of related party triangular asset acquisitions as reorganizations described in I.R.C. § 368. These regulations affect corporations engaging in such transactions and their shareholders. **72 Fed. Reg. 9262 (March 1, 2007)**.

COURT AWARDS AND SETTLEMENTS. The taxpayer was employed as an insurance claims adjuster and filed a law suit against the employer, alleging employment discrimination under state and federal law because the employer failed to provide working conditions that did not aggravate the taxpayer's mental disorders. The parties settled and the settlement agreement claimed that the payment was for emotional distress and did not mention any physical sickness or injury. The court held that the settlement proceeds were included in the taxpayer's gross income because the proceeds were not received as compensation for personal physical injury or sickness. **Seidel v. Comm'r, T.C. Memo. 2007-45**.

DISASTER LOSSES. On February 22, 2007, the president determined that certain areas in Oregon are eligible for assistance from the government under the Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121) as a result of a severe winter storm and flooding, which began on December 14, 2006. **FEMA-1683-DR.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their **2005** returns. On February 23, 2007, the president determined that certain areas in Pennsylvania are eligible for assistance from the government under the Act as a result of severe storms and flooding, which began on November 16, 2006. **FEMA-1684-DR.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their **2005** returns. On February 23, 2007, the president determined that certain areas in Louisiana are eligible for assistance from the government under the Act as a result of severe storms and tornadoes, which began on February 12, 2007. **FEMA-1685-DR.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their **2006** returns. On February 23, 2007, the president determined that certain areas in New York are eligible for assistance from the government under the Act as a result of record snow, which began on February 2, 2007. **FEMA-3273-EM.** Taxpayers who sustained losses attributable to these disasters may deduct the losses on their **2006** returns.

EMPLOYEE BENEFITS. The employer established a trust for the benefit of eligible retiring employees, their spouses and dependents to pay for retiree health benefits payable under a health reimbursement arrangement (HRA) plan. Under the HRA, retiree health benefits are limited to employees who regularly work 20 hours or more per week and who meet a 30 day waiting period. Coverage under the HRA was automatic for eligible employees and an eligible employee could not elect in or out of coverage. Only the employer contributed to the trust amounts as specified in the HRA or by resolution of the employer. The employer's contribution included the following: discretionary contributions to be made by the employer on behalf of all participating employees; contributions of all or a portion of employees' accumulated and unused vacation and sick leave upon retirement; and contributions of all or a portion of employees' annual excess vacation and sick leave that would otherwise be forfeited or paid out at year end. In accordance with the HRA's procedures and prior to the beginning of each HRA plan year, the employer will designate the amounts for the discretionary employer contributions to be contributed to the trust and the percentage or fixed amount of the vacation and sick leave to be contributed to the trust. Also, the employer, in its sole discretion, established a contribution amount applicable to vacation and sick leave accrued prior to the effective date of the HRA. All contribution amounts will be determined in the sole discretion of the employer and under no circumstances will employees be permitted to decide the discretionary taxpayer contributions to be contributed to the trust or the amount or percentage of their vacation and sick leave to be contributed to the trust. The HRA provided that under no circumstance may the retired eligible employee or the retired eligible employee's spouse or dependents receive any unused amounts at any time in cash or other benefits. Following the participant's death, unused amounts continued to carry over for the benefit of the participant's spouse and dependents. After the death of the surviving spouse and dependents, any amounts not applied to reimburse medical expenses will be forfeited. The IRS ruled that the employer's contributions to the HRA were excluded from the gross income of the recipient. **Ltr. Rul. 200708006, Nov. 17, 2006**.

ESTIMATED TAXES. The IRS has announced that farmers and fishermen who were affected by the snowstorms that began on February 19, 2007, may ask the IRS to waive any estimated tax penalties. Taxpayers are instructed to request this waiver by completing Form 2210-F, Underpayment of Estimated Tax by Farmers and Fishermen, which requires a statement explaining the reasons the taxpayers are unable to meet the estimated tax filing requirements. In addition, taxpayers are asked to write "Request for Waiver Due to Winter Ice Storms" at the top of their forms. All or part of the estimated tax underpayment penalty may be waived if the IRS determines that the underpayment was due to a casualty, disaster or other unusual circumstance, and that it would be inequitable to impose the penalty. **IR-2007-45**.

LIKE-KIND EXCHANGES. The IRS has adopted as final regulations providing guidance on how to depreciate MACRS property acquired in a like-kind exchange under I.R.C. § 1031 or as a result of an involuntary conversion under I.R.C. § 1033 when both the acquired and relinquished property are subject to MACRS in the hands of the acquiring taxpayer. A new section was added to the final regulations in order to provide an explanation of the applicable convention separate from the explanation of the rule for determining the remaining recovery period for the replacement MACRS property. The final regulations also contain a new rule which provides that, if using the convention that applies to the relinquished MACRS property, the remaining recovery period at the beginning of the year of disposition is less than the number of months between the first of that year and the time of disposition, the entire basis in the relinquished MACRS property is deductible in the year of disposition and the exchanged basis is zero. See Harl, "New Depreciation Regulations and Notice 2000-4," 15 *Agric. L. Dig*. 49 (2004). **72 Fed. Reg. 9245 (March 1, 2007)**.

The taxpayer was an LLC and was a related party to a subsidiary of a REIT. The taxpayer transferred real property to a qualified intermediary and the qualified intermediary sold the property to the subsidiary for cash. The qualified intermediary then used the cash to purchase properties designated by the taxpayer and transferred the properties to the taxpayer. The subsidiary intended to sell the property within two years. The IRS ruled that the recognition of gain rules of I.R.C. § 1031(f)(1)(C) did not apply because the taxpayer and subsidiary did not directly or indirectly exchange property. **Ltr. Rul. 200709036, Nov. 28, 2006**.

LOTTERY WINNINGS. The U.S. Supreme Court has denied certiorari for an appeal of the following case. The taxpayer won a state lottery and was to receive annual payments for 26 years. After eight years, the taxpayer decided to assign the remaining payments to a third party in exchange for a lump sum payment. The taxpayer characterized the lump sum as long-term capital gain. The court agreed with the holding in *United States v. Maginnis, 356 F.3d 1179 (9th Cir. 2004)*, and held that, because the original proceeds were classified as ordinary income, the lump sum payment was also ordinary income, even though received from an assignment of the right to receive the annual payments. **Lattera v. Comm'r, 2007 U.S. LEXIS 2167 (Sup. Ct. 2007), *denying cert*., 437 F.3d 399 (3d Cir. 2006), *aff'g*, T.C. Memo. 2004-216**.

PARTNERSHIPS

RETURNS. The IRS has provided tips to businesses, individuals, and tax professionals on how to avoid common errors found on Schedules K-1. Correct information on these forms is important because the IRS matches the data to other tax returns to ensure accurate reporting. Any flow-through entity, such as a partnership or S corporation, which issues Schedules K-1, should ensure that the K-1 properly identifies the taxpayer responsible for reporting the income shown on the schedule. Taxpayers who receive Schedules K-1 should remember to avoid netting income against losses (or expenses) not reported as passive activity losses on Form 8582. Ordinary business income shown on a K-1 should be reported on the recipient's return separately from any related deduction. For example, unreimbursed partnership expenses from nonpassive activities should be reported separately by an individual on line 28 of Schedule E (Form 1040) in column (h) and labeled "UPE" in column (a). **IR-2007-42**.

PENSION PLANS. For plans beginning in March 2007 for purposes of determining the full funding limitation under I.R.C. § 412(c)(7), the 30-year Treasury securities rate for this period is 4.82 percent, the corporate bond weighted average is 5.80 percent, and the 90 percent to 100 percent permissible range is 5.22 percent to 5.80 percent. **Notice 2007-27, I.R.B. 2007-13**.

RETURNS. The IRS has posted the following forms/instructions to its website, www.irs.gov/formspubs/index.html, in the Forms & Pubs section: Form 706-QDT (Rev. February 2007), U.S. Estate Tax Return for Qualified Domestic Trusts; Instructions for Form 706-QDT (Rev. February 2007) U.S. Estate Tax Return for Qualified Domestic Trusts; Form 2210-F (2006), Underpayment of Estimated Tax by Farmers and Fishermen.

S CORPORATIONS

CLASSES OF STOCK. The taxpayer corporation filed an S corporation election and its option holders entered into a shareholders' agreement which contained provisions relating to minimum distributions to shareholders by the taxpayer. Distributions under those provisions were made based on the shareholders' varying interests in the taxpayer's income in the current or immediately preceding taxable year (or earlier if such earlier year's taxable income is adjusted by the taxpayer or the IRS) (varying interest distributions). The taxpayer's varying interests distributions entailed year-end and quarterly distributions that enabled shareholders to make timely estimated and final tax payments. The distributions were made directly to the shareholders rather than to their respective taxing authorities on behalf of the shareholders. In addition to varying interests distributions, the taxpayer declared dividends and made pro rata distributions to its shareholders based on the number of shares owned by the shareholders as of the record date (record date distributions). The taxpayer's record date distributions were made in accordance with the corporate laws of the state, which provide that all shares of the same class are equal. The shareholders' agreement and applicable corporate laws of the state constituted the governing provisions of the taxpayer. The IRS ruled that varying interest distributions and record date distributions did not create additional classes of stock or cause termination of the S corporation status because the distributions were based on the shareholders' interests in the corporation. **Ltr. Rul. 200709004, Nov. 9, 2006**.

STOCK LOSSES. The taxpayers, husband and wife, were employed as a teacher and bakery clerk. The taxpayers also purchased and sold stock for personal investment. The taxpayers claimed the losses from the sale of stock as capital losses, arguing that the stock trading was a business. The court held that the losses were ordinary losses, subject to the annual $3,000 limitation, because the taxpayers did not hold securities in inventory in a retail or wholesale capacity. The stock was sold through a discount stock broker and was not purchased from and sold directly to customers. The decision is designated as not for publication. **Acharya v. Comm'r, 2007-1 U.S. Tax Cas. (CCH) ¶ 50,300**

(7th Cir. 2007).

TELEPHONE EXCISE TAX REFUND. The IRS has announced that about 30 percent of all taxpayers who have filed returns for 2006 failed to claim the telephone tax refund, even though almost one-half of that 30 percent used a tax return preparer. **IR-2007-40**. The IRS issued a reminder to taxpayers who do not normally file income tax returns that they can use Free File to request the telephone excise tax refund. **IR-2007-52**.

TIP INCOME. The IRS has announced that the deadline to elect to participate in the Attributed Tip Income Program (ATIP) has been extended to June 30, 2007. The IRS granted this extension, which applies only for the 2007 calendar year, in response to requests from the restaurant and beverage industry. Employers who would like to participate, but have already filed Form 8027 without electing ATIP participation, should make the election by filing a duplicate Form 8027 before June 30, 2007. The notation "Duplicate Filing to Elect ATIP Participation" should be prominently displayed on the duplicate Form 8027. In addition, a copy of the duplicate filing must be sent to the attention of the Employment Tax/ATIP Coordinator, as per Rev. Proc. 2006-30, 2006-2 C.B. 110. **IR-2007-44**.

NUISANCE

CATTLE CONFINEMENT FACILITY. The plaintiffs were residential neighbors to the defendants' cattle confinement facility. The defendants had obtained a livestock waste control facility permit for their operation for 5,000 head of cattle. The county had enacted zoning regulations, effective in 1999, that restricted expansion of existing livestock operations and required permits before expansion would be allowed. The county informed the defendants that their operation was not affected by the zoning regulations because the defendants' operation had not expanded after 1999. The plaintiffs filed a suit claiming that the defendants' operation violated the zoning regulations and was a nuisance. The trial court dismissed both actions. The appellate court affirmed the dismissal of the zoning violation claim because the plaintiffs did not include that in their appeal brief. On the nuisance claim, the court held that the plaintiffs had raised sufficient material issues of fact as to whether the defendants' operation caused a substantial invasion of or interference with the plaintiffs' enjoyment of their property. The court did not raise the issue of whether a CFO that complied with local zoning regulations could be considered a nuisance. **Johnson v. Knox County Partnership, 2007 Neb. LEXIS 32 (Neb. 2007)**.

PRODUCT LIABILITY

TRACTOR. The plaintiff's tractor was destroyed by a fire which occurred while the plaintiff was operating the tractor in the field. The plaintiff had removed trash protector guards from the side of the engine. The plaintiff sued the manufacturer of the tractor under theories of strict liability, negligence and breach of warranty. The plaintiff provided expert testimony as to how the fire occurred; however, the expert did not perform any tests on similar tractors and did not include the effect of the removal of the trash guards in the opinion as to the cause of the fire. The court held that the expert testimony was insufficient to support the product liability claims because the expert had not performed any tests to support the expert's theory as to the cause of the fire. Without the expert testimony, the plaintiff had not provided any evidence to support a cause of the fire and the court dismissed the case. **Solheim Farms, Inc. v. CNH America, LLC, 2007 U.S. Dist. LEXIS 14152 (D. Minn. 2007)**.

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AGRICULTURAL TAX SEMINARS

by Neil E. Harl

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SELECTED ISSUES IN FARM TAXATION

By Roger A. McEowen

June 11-12, 2007 Grand Ely Lodge, Ely, MN

The seminar is designed to provide attendees with a comprehensive and practical understanding of major agricultural income tax issues. In addition, the speaker is open to questions and responses from the attendees. Registrants may attend one or both days, with separate pricing for each combination. Your registration fee includes a comprehensive, annotated manual that will be updated just before the seminar. Break refreshments are included in the registration fee. NOTE: Register early due to space availability. Registration is limited to 70 participants.

The seminars are held on Monday from 1:00 am to 5:00 pm, and Tuesday from 8:00 am to noon. Registrants may attend one or both days. On Monday, Professor McEowen will speak about farm and ranch income tax. On Tuesday, Professor McEowen will cover farm and ranch estate and business planning. Your registration fee includes comprehensive annotated seminar materials for the days attended.

The seminar registration fees are $90 (one day) and $150 (two days). After February 28, 2007, the registration fees are $125 (one day) and $200 (two days). respectively.

These seminars are sponsored by Iowa State University. Full information is available online at www.extension.iastate.edu/agdm/wdlegalandtaxes.HTML. Contact Paula Beckman, Agricultural Law, Iowa State University, 206 Curtiss Hall, Ames, IA 50011-1050 Tel: 515-294-6924 Fax: 515-294-0700 E-mail: pbeckman@iastate.edu